

E-FILED on 11/26/07

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

NEAL G. BENSON,

Plaintiff,

v.

SANTA CLARA MASONIC LODGE # 299,
SANTA CLARA POLICE DEPARTMENT
AND CITY OF SANTA CLARA, CA,
MASONIC GRAND LODGE SAN
FRANCISCO, CA. SCOTTISH RITE
BODIES OF SAN JOSE, CA,

Defendants.

No. C-07-03476 RMW

ORDER GRANTING MOTIONS TO
DISMISS

[Re Docket No. 8, 11]

Defendants move to dismiss plaintiff Neal G. Benson's ("Benson") complaint for failure to state a claim and as barred under *res judicata*. Benson's complaint stems from events that occurred on August 1, 1991. Benson sued the same parties in this action in a prior action (C-03-00119), which this court dismissed with prejudice for failure to state a claim. As before, Benson's pleadings remain unintelligible. In a recent filing, Benson states that, "My big ERROR WHEN FILING Case Number C03 00119 was to not be per Civil rule 8 and Federal Rule civil Procedure 8 and not pointing out the Illegal acts of Sgt. Rees." The allegedly illegal actions of Sgt. Rees took place in

1 1993. While acknowledging the error of omitting his new allegations, Benson does not explain why
 2 they could not have been brought earlier.¹

3 *Res judicata* exists to ensure finality. The doctrine applies to bar claims where a prior action
 4 "(1) involved the same 'claim' or cause of action as the later suit, (2) reached a final judgment on the
 5 merits, and (3) involved identical parties or privies." *Sidhu v. Flecto Co., Inc.*, 279 F.3d 896, 900
 6 (9th Cir. 2002). Both Benson's prior case and his current complaint alleged that various criminal
 7 acts occurred in the early 1990s that have deprived him of his honor and dignity. The prior case, 03-
 8 00119, reached a final judgment on the merits and involved the same parties. *See Federated Dep't
 9 Stores, Inc. v. Moities*, 452 U.S. 394, 399 & fn. 3 (1981) ("The dismissal for failure to state a claim
 10 under Federal Rule of Civil Procedure 12(b)(6) is a 'judgment on the merits.'"). As all of the
 11 elements of *res judicata* apply, Benson's current attempt to relitigate the claims he raised in 03-
 12 00119 are barred.

13 In further support of dismissal, the court finds that the complaint is not intelligible. A
 14 complaint must be "simple, concise, and direct." Fed. R. Civ. P. 8(e)(1). Despite acknowledging
 15 that his pleadings are difficult for the court to understand (p. 112), Benson's complaint does not
 16 inform the court of the nature of his claims. Benson's most recent pleading in opposition is
 17 essentially a list of presumably criminal code sections and conclusory allegations that those sections
 18 have been violated. This pleading does not cure the defects in his complaint, nor does it help the
 19 court understand Benson's allegations.

20 For the foregoing reasons, the court GRANTS the defendants' motions to dismiss with prejudice.

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22 DATED: 11/15/07



23
 24 RONALD M. WHYTE
 25 United States District Judge

26 ¹ Benson also states that, "I have the evidence to prosecute them and let the court
 27 decide if they were guilty. The Federal court was the only possible place now I could get help?"
 28 Benson appears to have previously contacted the Santa Clara County District Attorney and the FBI.
 As the court has previously explained, only the government, and not individuals like Benson, may
 press criminal charges.

1 **A copy of this order was mailed on 11/26/07 to:**

2 **Plaintiff:**

3 Neal G. Benson (PRO SE)
5462 Begonia Drive
4 San Jose, CA 95124

5 **Counsel for Defendants:**

6 Peggy S. Doyle doyle@lbbslaw.com
Michael C. Serverian mserverian@rlss.com
7 Shawn Adrian Toliver toliver@lbbslaw.com

8 Counsel are responsible for distributing copies of this order to co-counsel, as necessary.

9 **Dated:** 11/26/07

10 **TSF**
Chambers of Judge Whyte

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